



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

**MATTER OF O-A-A-**

**DATE: JAN. 31, 2019**

**MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION**

**PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER**

The Petitioner, a petroleum engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the matter to us, and we dismissed the appeal.<sup>1</sup> The matter is now before us on combined motions to reopen and reconsider. For the reasons discussed below, we will deny the motions.

**I. LAW**

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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<sup>1</sup> *See Matter of O-A-A-*, ID# 1285616 (AAO July 10, 2018).

## II. ANALYSIS

After filing the petition, the Petitioner provided a “statement of intent” indicating that he is “currently working as a petroleum engineering data scientist in a premier independent oil and gas company.” He stated that he is currently employed by [REDACTED] an oil and gas company with \$12 billion in annual revenue.<sup>2</sup> In addition, the Petitioner submitted a May 2017 employment verification letter from [REDACTED] stating that he “works as an Evaluation and Planning [E&P] Professional in the E&P Analytics Department” and that his work for the company “involves helping our subsurface business unit integrate, model, predict, and analyze complex data, as well as other related activities.” He maintained that he intends to continue his work in the field of petroleum engineering “with an emphasis on data science/data analytics.” He also expressed his desire to “continue conducting independent research in the field of carbon sequestration.”

In our prior decision, we noted that the Petitioner did not sufficiently clarify how his work performing petroleum engineering services as an E&P professional for [REDACTED] related to his proposed research. We found that the record did not show that his proposed petroleum engineering and data science work for [REDACTED] has implications beyond this company and its business partners at a level sufficient to demonstrate its national importance under the first prong of the *Dhanasar* analytical framework. Furthermore, while we determined that the Petitioner’s proposed carbon sequestration research and development has both substantial merit and national importance, we found that he had not sufficiently demonstrated that he is well positioned to advance this endeavor. Accordingly, he did not meet the second prong of the *Dhanasar* framework.<sup>3</sup>

### A. Motion to Reconsider

On motion, the Petitioner contends that our appellate decision “establishes a *de facto* job requirement which is legally incorrect” and that eligibility for a national interest waiver “is based on expertise, not where the person is currently working.” Our decision, however, did not indicate or imply that a job offer was required under the *Dhanasar* analytical framework. As noted in our decision, we considered information about the Petitioner’s current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed continuation of petroleum engineering work met the requirements of the first prong of the *Dhanasar* framework. In addition, we consider a petitioner’s “expertise” among other factors under *Dhanasar*’s second prong in determining whether he is well positioned to advance his proposed endeavor.

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<sup>2</sup> We explained in our appellate decision that because the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer.

<sup>3</sup> As noted by the Director, the Petitioner’s experience as a petroleum engineering data scientist with [REDACTED] began after he filed the instant petition and therefore does not demonstrate his eligibility under the second prong of the *Dhanasar* analysis at the time of filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the record did not indicate that the Petitioner was conducting his proposed research as part of his employment with [REDACTED] nor did it otherwise show how this position renders him well positioned to advance his proposed endeavor.

The Petitioner further argues that that we “massively and incorrectly overestimated the government interest in Dr. Dhanasar’s research” in our precedent decision.<sup>4</sup> He asserts that “[i]n 2017 [REDACTED] had revenue in excess of \$13 billion” while the university where Dr. Dhanasar worked received only “\$11 million of government funded research.”<sup>5</sup> The Petitioner further contends that we have “essentially . . . incorrectly held that workers at a university (that receives a relatively tiny amount of funding from government agencies) are legally placed in a privileged position over private sector workers (who do not receive government funding) – even when the private sector worker has more impact tha[n] Dr. Dhanasar.”

The Petitioner’s argument above misstates our findings relating to the second prong of the *Dhanasar* framework. This prong shifts the focus from the proposed endeavor to the petitioner. *Id.* at 890. To determine whether a petitioner “is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor;” as well as “the interest of potential customers, users, investors, or other relevant entities or individuals.” *Id.* at 890. As *Dhanasar*’s second prong focuses on the individual, the Petitioner has not sufficiently explained or established how an employer’s yearly revenue or a university’s total government funded research budget are relevant to our determination under that prong.

With respect to the petitioner in *Dhanasar*, the “consistent government funding” of his specific research projects was a relevant consideration in determining that he was well positioned to advance his proposed endeavor. *Id.* at 893. In the present matter, unlike in *Dhanasar*, the record does not show the funding that [REDACTED] or any other organization has devoted to the Petitioner’s research projects. That said, private or public sector interest in, or funding of, an individual’s work are not the only factors that we consider in determining eligibility under prong two of the *Dhanasar* framework. For example, the petitioner in *Dhanasar* also presented “multiple graduate degrees in relevant fields” and “copies of his publications and other published materials that cite his work.” *Id.* at 891-92. In addition, our precedent decision stated:

[T]he petitioner has experience conducting research and developing computational models that support the mission of the United States Department of Defense (“DOD”) to develop air superiority and protection capabilities of U.S. military forces, and that assist in the development of platforms for Earth observation and interplanetary exploration. The petitioner submitted detailed expert letters describing U.S. Government interest and investment in his research, and the record includes documentation that the petitioner played a significant role in projects funded by grants from the National Aeronautics and Space Administration (“NASA”) and the

<sup>4</sup> Dr. Dhanasar was the petitioner in our precedent decision.

<sup>5</sup> The Petitioner’s motion includes information from [REDACTED] listing its direct and indirect federal funding amounts. In addition, he offers information from *Wikipedia* indicating that [REDACTED] generated \$13.949 billion in revenue in 2017.

Air Force Research Laboratories (“AFRL”) within DOD. Thus, the significance of the petitioner’s research in his field is corroborated by evidence of peer and government interest in his research, as well as by consistent government funding of the petitioner’s research projects.

*Id.* at 892-893.

The Petitioner contends that as a “private sector worker,” he “has more impact” and a stronger citation record than Dr. Dhanasar. As noted in our prior decision, while we listed Dr. Dhanasar’s “publications and other published materials that cite his work” among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found “[t]he petitioner’s education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research.” *Id.* at 893. We reiterate that we look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and citations are merely one factor among many that may contribute to such a finding.<sup>6</sup>

Our previous decision acknowledged that the record included several letters of recommendation, but found that they did not “offer sufficient detail regarding his specific research accomplishments” to demonstrate that they render him well positioned to advance his proposed research. On motion, the Petitioner asserts that our decision did not acknowledge a letter of support from [REDACTED] a staff scientist in the Earth Sciences Division at [REDACTED] and a visiting professor at [REDACTED]<sup>7</sup> However, our appellate decision did address [REDACTED] letter. For example, we stated:

[REDACTED] indicates that the Petitioner “developed a novel method of reducing aquiver pressurization while also increasing the storage efficiency of the injected CO<sub>2</sub>.” While [REDACTED] contends that he and other members of the research community found the Petitioner’s work “to be of significant value,” he does not offer specific examples of how the Petitioner’s simulation method has generated positive interest among relevant parties, has been implemented in the oil and gas industry, or otherwise reflects a record of success in his area of research.

In addition to the letter from [REDACTED] at [REDACTED] the Petitioner asks that we specifically consider the letter he previously submitted from [REDACTED] a senior research scientist at [REDACTED]

<sup>6</sup> With regard to the Petitioner’s citation evidence, our prior decision noted that he did not offer comparative statistics indicating how often other petroleum engineering researchers are cited, nor did he otherwise demonstrate that his published and presented research constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet this prong.

<sup>7</sup> [REDACTED] indicated that the Petitioner “was a student of mine during my time at [REDACTED]

asserted that the Petitioner presented a paper at the 2010 [REDACTED] conference paper that “demonstrated how to use aquifer management strategies to reduce aquifer pressure and increase CO<sub>2</sub> storage efficiency.” [REDACTED] also mentions an article that the Petitioner authored entitled “

[REDACTED] published in the *International Journal of Greenhouse Gas Control* in 2016. He contends that “[t]he impact of the Petitioner’s work will be reflected on both the theoretical level and in practical applications,” but does not provide any specific examples of such impact or of how the Petitioner’s research record otherwise renders him well positioned to advance his proposed endeavor.

The Petitioner also requests that we consider the letter he initially submitted from [REDACTED] a member of the [REDACTED] of Engineering, and professor and Endowed Chair of Engineering at [REDACTED]<sup>8</sup> She discusses the Petitioner’s involvement in their research project aimed at finding “aquifer management strategies that increase the storage efficiency of carbon sequestration in deep saline aquifer and alleviate aquifer pressurization.” [REDACTED] asserts that the Petitioner “was a key member of the project, and critical to its successful completion.” She further states that he “has published two publications in peer-reviewed journals,” but the record does not include sufficient evidence that this work constitutes a record of success or otherwise shows that he is well positioned to advance his proposed research.

Finally, the Petitioner asserts that we erred in failing to consider his wife, daughter, and the country conditions in Nigeria. These issues, however, are not relevant to determining whether the Petitioner satisfies the requirements set forth in the *Dhanasar* analytical framework, and thus that a national interest waiver is warranted.

The Petitioner has not met the requirements for a motion to reconsider as he has not demonstrated that we erred in our previous analysis based on the record before us on appeal. Further, the motion to reconsider does not establish that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy.

## B. Motion to Reopen

In support of the motion to reopen, the Petitioner presents a paper he prepared for the July 2018 [REDACTED], entitled [REDACTED]

[REDACTED] He also provides an abstract that he submitted for oral or poster presentation at the November 2017 [REDACTED]

[REDACTED] workshop. This evidence post-dates the filing of the petition and therefore does not show his eligibility under the second prong of the *Dhanasar* framework at the time of filing. See 8 C.F.R.

<sup>8</sup> [REDACTED] previously served as a professor of petroleum engineering at [REDACTED] from 2004 until 2014 and was the Petitioner’s research advisor. The Petitioner’s motion includes documentation indicating that she is a member of the [REDACTED] of Engineering.

§ 103.2(b)(1). Regardless, the record does not document that his paper and abstract were actually presented at the aforementioned conference and workshop, nor does the evidence otherwise show that his research findings render him well positioned to advance his proposed endeavor.

The Petitioner also submits updated information from OnePetro.org relating to downloads and pricing for two papers he authored: one published in *Society of Petroleum Engineers Journal* (2013) and one presented at a [REDACTED] conference (2010). We previously explained in our appellate decision that while these papers have been downloaded hundreds of times, the Petitioner has not presented evidence illustrating the significance of this number, or establishing that the research has been implemented, utilized, or applauded by those viewing it. These downloads of the Petitioner's two articles corroborate that he has disseminated his findings, but they are not sufficient to demonstrate that his work has been influential among petroleum engineering researchers, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed research.

In addition, the Petitioner provides a July 2018 article from the Gatestone Institute stating that more than 6,000 Christians have been killed in the Petitioner's native country of Nigeria since January 2018, information from the American Society for Engineering Education showing that 4.4% of doctoral degrees are awarded to black or African American students, and documentation relating to his spouse's career success in the United States. This information and evidence, however, does not relate to the Petitioner's eligibility under the second prong of the *Dhanasar* analytical framework. As the Petitioner has not established that he is well positioned to advance his proposed endeavor, he has not met the second prong of the *Dhanasar* framework.

### III. CONCLUSION

The Petitioner's motion does not show that our previous decision was based on an incorrect application of law or policy and does not include new information or evidence that overcomes the grounds underlying our previous decision. As the Petitioner has not met the second prong set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The motion to reconsider is denied.

**FURTHER ORDER:** The motion to reopen is denied.

Cite as *Matter of O-A-A-*, ID# 1974191 (AAO Jan. 31, 2019)